

DRAFT

ITEM #5

P.C. MEETING: 10/21/04

PUBLIC HEARING

COMMUNITY: Fontana/2nd Supervisorial District
APPLICANT: Kamdat Investment, Inc.
PROPOSAL: A) General Plan Amendment from RS-1 (Single Residential-1 acre
min parcel size) to RS (Single Residential)
B) Tentative Tract 16738 to create 10 lots on 2.24 acres.
LOCATION: Approximately 330 ft. west of Live Oak Avenue at East End of Mallory
Dr.
JCS/INDEX: 12224CF1/W147-99/2004GPA01/TT06738/TT01
REP('s): Trittech Associates, Inc.
STAFF: Ron Riley

Ron Riley, Planner, presented the Staff Report, which is on file with the Current Planning Division of the Land Use Services Department.

Chairman Laning referred to Lot #5 and asked if the 20-foot access was included in the Conditions.

Mr. Riley stated that the requested adjustments to the conditions were included and that a revised Tentative Tract Map reflecting the 25 foot setback.

Commissioner Cramer stated that there was concern from surrounding residents that Mallory Drive not be made a through street.

Mr. Riley stated the through street was required by the County Road Division and that the proposed subdivision would generate approximately 10 vehicle trips during peak hours, which is a minimal impact. Mr. Riley stated that he spoke with one of the surrounding property owners regarding this issue during the field review. He also stated that there was a current drainage problem at the site, which would be resolved with the installation of the through street.

PUBLIC TESTIMONY

The following person testified in favor of the proposal

Tom Kao, Applicant's Representative and Engineer

Mr. Kao stated that they have made revisions from the first design, which did not show Mallory as a through street. He stated that the current design is better and that they accept all conditions as prepared by staff.

Commissioner Dowling stated that the property owner of lot 10 was currently in escrow for the sale of this lot to the developer and that there are a series of conditions, which need to be met in order for escrow to close. One of the requirements was that there would not be a through street. The property owner indicated that they would cancel escrow if a through street were approved.

Mr. Kao stated that he believes the buyer has spoken to the seller regarding this issue.

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Commissioner Dowling stated concern whether it was legal for the County to approve this tract map with the conditions when the property owner has stated in writing that they would not allow the escrow to continue if a through street was required.

Robin Cochran, County Counsel, stated that the County must have the property owners's consent for processing of the tract map.

The following person testified in opposition to the proposal:

Margaret Penado, Property Owner of one of the two lots in the project.

Mrs. Penado stated that she and her husband own lot 10. She indicated that they have not seen the revised tract map and have not been contacted regarding the change.

Commissioner Dowling stated that it has been determined by the Roads Division that if there is going to be development in this area there will have to be a through street.

Mrs. Penado stated concern that there was not a 15-foot setback on the side yard of the lot to the East of her property.

Mr. Riley stated that the side yard setback is required to be 15 feet.

Mrs. Penado stated concern regarding eminent domain should she decide to pull out of the sale of her property.

Chairman Laning stated that the only thing the Commission can do is consider the application before them. What transpires between the applicant and Mrs. Penado is between them.

Mrs. Cochran stated that the property owner would have to sign the final map for recordation.

Commissioner Dowling stated that if the project is approved by the Commission does not mean that the Penados have to sell their property or agree to the proposal. He stated that the County has no legal right or eminent domain to take their property.

Mrs. Penado stated concern with drive by shootings and racing should a through street be approved.

Chairman Laning stated concern, from a public safety stand point, that there is no way for fire equipment to get into the neighborhood and turn around without the through street.

Commissioner Dowling stated for clarification that the issues between the property owner and the developer are separate and have nothing to do with the action taken by the Commission today.

Mr. Kao stated that he works for the developer and was surprised that the seller was not aware of the revision. He stated that a 15-foot setback for the side yard would not be a

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problem and could be added in the Conditions. He stated that the seller's signature is required for the final map or the map will not record.

Commissioner Kwappenberg stated that she would like to see block walls utilized around the perimeter and preferred that wood fencing not be used between residents.

Mr. Riley stated that Condition #61d. was included to provide for a block wall around the perimeter of the project. He stated that typically wood fencing is utilized between the created lots. Mr. Riley also stated that Mrs. Penado's signature is on the application for processing. He further stated that the original submittal was for a cul-de-sac, however after review by the County Roads Division a re-design was required to show the knuckle and connection between Arbor Avenue and Mallory Drive. The Fire Department also expressed concern that the proposed cul-de-sac would be greater than 600 feet, which was the maximum for a cul-de-sac for fire access.

Commissioner Kwappenberg suggested requiring something other than wood be used for fencing between the created lots.

Mrs. Penado stated that the signature on the application was to subdivide their lot and the only reason they signed was because they were told there would be a cul-de-sac.

There being no one else in the audience to speak on this item, Chairman Laning closed the public testimony.

DISCUSSION

Commissioner Kwappenberg motioned to approve staff's recommendation to include amendments as discussed regarding setbacks and fencing.

Commissioner Dowling seconded the motion to include the option of utilizing other types of fencing other than wood between the created lots.

COMMISSION ACTION

RECOMMEND that the Board of Supervisors **ADOPT** the Mitigated Negative Declaration; **ADOPT** the General Plan Amendment, Official Land Use District change from Single Residential-one acre minimum lot size (RS-1) to Single Residential (RS) on 2.24 acres; **APPROVE** Tentative Tract 16738 for the creation of 10 residential lots on 2.24 acres, subject to the revised Conditions of Approval; **ADOPT** the Findings; and **FILE** a Notice of Determination

MOTION: Kwappenberg

SECOND: Dowling

AYES: Cramer, Dowling, Kwappenberg, Laning

NOES: None

ABSENT: Mathews

ABSTAIN: None